



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a Claim Against the Dealer Bond
of Scott A. Kading, d/b/a/ S K Auto Sales,

Case No. TR-00-0008

FINAL DECISION

On January 3, 2000, Scott Friedley filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of S K Auto Sales. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing. On February 21, 2000, a Public Notice of Time to File Dealer Bond Claim was published in The Post-Crescent, a newspaper published in the city of Appleton, Outagamie County. The notice informed other persons who may have claims against S K Auto Sales to file them with the Department by April 21, 2000, and scheduled a hearing on the claims for May 5, 2000. No additional claims were filed. Because no additional claims were received, the May 5th hearing was cancelled. The Administrative Law Judge issued a Preliminary Determination on April 26, 2000. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Scott Roy Friedley
440 Sixth Street
Menasha, WI 54952

Scott A. Kading, d/b/a/ S K Auto Sales,
389 Nassau Street
Menasha, WI 54952

Washington International Insurance Company
Ashton Bonding Agency
819 Walnut Street, Suite 211
Kansas City, MO 64106

FINDINGS OF FACT

1. Scott A. Kading, d/b/a/ S K Auto Sales, (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 1050 Appleton Road, Menasha, Wisconsin. The Dealer's motor vehicle dealer license was suspended on May 11, 1999.

2. The Dealer had a bond in force from July 26, 1996 to July 26, 1999. (Bond #S200913897 from Washington International Insurance Company, Kansas City, Missouri.)

3. On March 26, 1999, Scott Friedley purchased a 1984 Dodge pickup truck, Vehicle Identification Number 1B7FD14H5E5319393, from the Dealer for \$913.50 including sales tax and license and registration fees. The Dealer did not complete a Wisconsin Buyers Guide for the vehicle or a Motor Vehicle Purchase Contract for the transaction. The failure of the Dealer to complete a Wisconsin Buyers Guide prior to offering the vehicle for sale constitutes a violation of sec. Trans 139.04(6), Wis. Adm. Code, and the failure of the Dealer to furnish a Motor Vehicle Purchase Contract to Mr. Friedley constitutes a violation of sec. Trans 139.05(1), Wis. Adm. Code.

4. Mr. Friedley never received a title for the vehicle. Mr. Friedley filed a complaint with the Department of Transportation—Dealer Section (Dealer Section) against the Dealer. The investigator from the Dealer Section determined that the Dealer failed to submit the application for a title and registration for the vehicle to the Department of Transportation. The investigator was unable to resolve the complaint and on January 3, 2000, Mr. Friedley filed a complaint against the surety bond of the Dealer. The claim is in the amount of \$913.50 plus the amount Mr. Friedley spent on parts for the vehicle. Mr. Friedley submitted to the Department of Transportation receipts totaling \$162.35 for motor vehicle parts.

5. Mr. Friedley paid \$913.50 to purchase the vehicle and \$162.35 for parts to repair the vehicle. Mr. Friedley has not received a title, registration or license plates for the vehicle and; therefore, is unable to lawfully operate or sell the vehicle. Accordingly, Mr. Friedley is entitled to a refund of the amount he has invested in this vehicle.

6. Mr. Friedley sustained a loss of \$1,075.85 as a result of the Dealer's failure to submit the title and application of title to Department of Transportation within seven business days as required by sec. 342.16, Stats. A violation of sec. 342.16, Stats., is, in turn, a violation of sec. 218.01(3)(a)14, Stats.

7. The bond claim was filed within three years of the ending date of the period the Washington International Insurance Company bond was in effect and is; therefore, a timely claim.

8. The loss sustained by Mr. Friedley was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, this amount of the claim is allowable.

CONCLUSIONS OF LAW

1. Scott Friedley's claim arose on March 26, 1999, the date he purchased the subject vehicle from Scott A. Kading, d/b/a/ S K Auto Sales. The surety bond issued to Scott A. Kading, d/b/a/ S K Auto Sales, by Washington International Insurance Company covers a one-year period commencing on July 26, 1998. The claim arose during the period covered by the surety bond.
2. On January 3, 2000, Mr. Friedley filed a claim against the motor vehicle dealer bond of Scott A. Kading, d/b/a/ S K Auto Sales. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Cod, the claim is timely.
3. Mr. Friedley's loss was caused by an act of Scott A. Kading, d/b/a/ S K Auto Sales, that would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Friedley has submitted documentation to support a claim in the amount of \$1,075.85. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Scott Friedley against the motor vehicle dealer bond of Scott A. Kading, d/b/a/ S K Auto Sales, is APPROVED in the amount of \$1,075.85. Washington International Insurance Company shall pay Mr. Friedley this amount for his loss attributable to the actions of Scott A. Kading, d/b/a/ S K Auto Sales, and Mr. Friedley shall surrender possession of the vehicle to Washington International Insurance Company.

Dated at Madison, Wisconsin on June 12, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By _____
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE